

Introduced by Senator Wyland

February 10, 2011

An act to amend Section 296 of the Penal Code, relating to forensic specimens.

LEGISLATIVE COUNSEL'S DIGEST

SB 248, as introduced, Wyland. Forensic specimens: offenders.

Existing law, as amended by voter approval of Proposition 69 at the November 2, 2004, statewide general election, requires persons who are arrested for or convicted of, as specified, certain offenses, or who are required to register as a sex offender, to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples as specified for law enforcement identification analysis. The initiative authorizes amendment of these provisions by the Legislature if the amendments further the purposes of the initiative and are consistent with its purposes to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime-solving and exonerating the innocent.

This bill would add to the list of persons required to provide forensic identifying samples, persons, including juveniles, who pled guilty, or no contest to, or were convicted of, or adjudicated for committing, certain offenses punishable as misdemeanors or felonies or both, pertaining to poisoning animals, cruelty to animals, stalking, specified species of disorderly conduct, installing a 2-way mirror in specified locations, and loitering in a public place with the intent to commit prostitution. The bill would also make nonsubstantive, technical corrections.

By increasing the burdens on local government agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 296 of the Penal Code is amended to
2 read:

3 296. (a) The following persons shall provide buccal swab
4 samples, right thumbprints, and a full palm print impression of
5 each hand, and any blood specimens or other biological samples
6 required pursuant to this chapter for law enforcement identification
7 analysis:

8 (1) Any person, including any juvenile, who is convicted of or
9 pleads guilty or no contest to any felony offense, or is found not
10 guilty by reason of insanity of any felony offense, or any juvenile
11 who is adjudicated under Section 602 of the Welfare and
12 Institutions Code for committing any felony offense.

13 (2) Any adult person who is arrested for or charged with any of
14 the following felony offenses:

15 (A) Any felony offense specified in ~~Section 290~~ *the Sex Offender*
16 *Registration Act (Chapter 5.5 (commencing with Section 290))* or
17 attempt to commit any felony offense described in ~~Section 290~~ *the*
18 *act*, or any felony offense that imposes upon a person the duty to
19 register in California as a sex offender under ~~Section 290~~ *the act*.

20 (B) Murder or voluntary manslaughter or any attempt to commit
21 murder or voluntary manslaughter.

22 (C) Commencing on January 1 of the fifth year following
23 enactment of the act that added this subparagraph, as amended,
24 any adult person arrested or charged with any felony offense.

25 (3) Any person, including any juvenile, who is required to
26 register under Section 290 or 457.1 because of the commission of,
27 or the attempt to commit, a felony or misdemeanor offense, or any
28 person, including any juvenile, who is housed in a mental health

1 facility or sex offender treatment program after referral to ~~such~~
2 *that* facility or program by a court after being charged with any
3 felony offense.

4 (4) *Any person, including any juvenile, who is convicted or*
5 *pleads guilty or no contest to, or who is adjudicated under Section*
6 *602 of the Welfare and Institutions Code for, committing a violation*
7 *of any of the following:*

8 (A) *Section 596.*

9 (B) *Subdivision (c) of Section 597.*

10 (C) *Subdivision (a) of Section 646.9.*

11 (D) *Subdivision (a), (b), (i), or (j) of Section 647.*

12 (E) *Section 653n.*

13 (F) *Section 653.22.*

14 ~~(4)~~

15 (5) The term “felony” as used in this subdivision includes an
16 attempt to commit the offense.

17 ~~(5)~~

18 (6) Nothing in this chapter shall be construed as prohibiting
19 collection and analysis of specimens, samples, or print impressions
20 as a condition of a plea for a non-qualifying offense.

21 (b) The provisions of this chapter and its requirements for
22 submission of specimens, samples and print impressions as soon
23 as administratively practicable shall apply to all qualifying persons
24 regardless of sentence imposed, including any sentence of death,
25 life without the possibility of parole, or any life or indeterminate
26 term, or any other disposition rendered in the case of an adult or
27 juvenile tried as an adult, or whether the person is diverted, fined,
28 or referred for evaluation, and regardless of disposition rendered
29 or placement made in the case of juvenile who is found to have
30 committed any ~~felony~~ *qualifying* offense or is adjudicated under
31 Section 602 of the Welfare and Institutions Code.

32 (c) The provisions of this chapter and its requirements for
33 submission of specimens, samples, and print impressions as soon
34 as administratively practicable by qualified persons as described
35 in subdivision (a) shall apply regardless of placement or
36 confinement in any mental hospital or other public or private
37 treatment facility, and shall include, but not be limited to, the
38 following persons, including juveniles:

39 (1) Any person committed to a state hospital or other treatment
40 facility as a mentally disordered sex offender under *former* Article

1 1 (commencing with Section 6300) of Chapter 2 of Part 2 of
2 Division 6 of the Welfare and Institutions Code.

3 (2) Any person who has a severe mental disorder as set forth
4 within the provisions of Article 4 (commencing with Section 2960)
5 of Chapter 7 of Title 1 of Part 3 of the Penal Code.

6 (3) Any person found to be a sexually violent predator pursuant
7 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
8 2 of Division 6 of the Welfare and Institutions Code.

9 (d) The provisions of this chapter are mandatory and apply
10 whether or not the court advises a person, including any juvenile,
11 that he or she must provide the data bank and database specimens,
12 samples, and print impressions as a condition of probation, parole,
13 or any plea of guilty, no contest, or not guilty by reason of insanity,
14 or any admission to any of the offenses described in subdivision
15 (a).

16 (e) If at any stage of court proceedings the prosecuting attorney
17 determines that specimens, samples, and print impressions required
18 by this chapter have not already been taken from any person, as
19 defined under subdivision (a) ~~of Section 296~~, the prosecuting
20 attorney shall notify the court orally on the record, or in writing,
21 and request that the court order collection of the specimens,
22 samples, and print impressions required by law. However, a failure
23 by the prosecuting attorney or any other law enforcement agency
24 to notify the court shall not relieve a person of the obligation to
25 provide specimens, samples, and print impressions pursuant to this
26 chapter.

27 (f) Prior to final disposition or sentencing in the case the court
28 shall inquire and verify that the specimens, samples, and print
29 impressions required by this chapter have been obtained and that
30 this fact is included in the abstract of judgment or dispositional
31 order in the case of a juvenile. The abstract of judgment issued by
32 the court shall indicate that the court has ordered the person to
33 comply with the requirements of this chapter and that the person
34 shall be included in the state's DNA and Forensic Identification
35 Data Base and Data Bank program and be subject to this chapter.

36 However, failure by the court to verify specimen, sample, and
37 print impression collection or enter these facts in the abstract of
38 judgment or dispositional order in the case of a juvenile shall not
39 invalidate an arrest, plea, conviction, or disposition, or otherwise
40 relieve a person from the requirements of this chapter.

1 SEC. 2. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

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